

**United States Department of Labor
Employees' Compensation Appeals Board**

P.L., Appellant

and

**U.S. POSTAL SERVICE, GENERAL MAIL
FACILITY, Phoenix, AZ, Employer**

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**Docket No. 12-1382
Issued: December 21, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 11, 2012 appellant filed a timely appeal of a May 2, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a low back injury on October 29, 2011 in the performance of duty.

FACTUAL HISTORY

On October 29, 2011 appellant, then a 53-year-old automation clerk, filed a traumatic injury claim for his low back after removing a tray from the stacker in the performance of duty. The employing establishment provided him with an authorization for treatment on

¹ 5 U.S.C. § 8101 *et seq.*

October 29, 2011. Dr. Katherine L. Mitchell, an emergency physician, examined appellant on October 29, 2011. She diagnosed acute back injury and recommended that he remain off work through November 2, 2011 and seek treatment from his attending physician.

On October 29, 2011 appellant's supervisor stated that appellant reported picking up a tray of mail and experiencing lower back pain.

In a letter dated November 10, 2011, OWCP requested that appellant provide additional factual and medical evidence in support of his claim. It allowed 30 days for a response. Appellant submitted medical records from the Phoenix Veterans Administration Healthcare System. On October 29, 2011 Dr. Mitchell obtained a history that appellant experienced a sudden onset of acute severe low back pain while on duty. She stated, "[Appellant] states [that] he was pivoting while carrying a mail tray and felt the sudden sharp pain in his lower back on the evening of October 28, 2011. Dr. Mitchell diagnosed acute low back strain. In a November 10, 2011 note, Dr. Christopher T. Burke, a Board-certified internist, reported that appellant had a recent flare up of his chronic low back pain. On June 4, 2011 a Dr. Vincent Tang noted that appellant had a history of chronic back pain secondary to degenerative joint disease with an acute exacerbation of his right lower back pain.

By decision dated December 15, 2011, OWCP denied appellant's claim. It found that he failed to submit sufficient rationalized medical opinion evidence to establish a causal relationship between his diagnosed back strain and the October 29, 2011 employment incident.

Appellant requested reconsideration on February 1, 2012. He submitted a February 24, 2012 note from Dr. Burke, who listed that appellant sought treatment on October 29, 2011 due to low back pain that began while he was at work. Appellant was diagnosed with acute low back strain.

In a decision dated May 2, 2012, OWCP reviewed the merits of appellant's claim and found that he had not submitted sufficient medical evidence to establish that his diagnosed condition was due to the lifting incident at work on October 29, 2011.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³

² 5 U.S.C. §§ 8101-1893.

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

OWCP defines a traumatic injury as, “[A] condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected.”⁵ To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.⁷

ANALYSIS

OWCP accepted as factual that appellant, on October 29, 2011, lifted a tray of mail in the performance of duty. Appellant sought treatment from Dr. Mitchell that day complaining of low back pain. Dr. Mitchell noted his incident at work and diagnosed low back strain. She did not offer an opinion on the causal relationship between appellant’s diagnosed condition and his employment merely noting that he reported pain while moving a tray of mail. Dr. Mitchell’s note is not sufficient to meet his burden of proof as she did not clearly attribute his condition to his accepted employment incident and did not offer any medical reasoning in support of such an attribution. The medical evidence in the record from Drs. Burke and Tang noted that appellant had a history of degenerative joint disease of the spine and that he has frequent “flare-ups” of this condition. Due to appellant’s preexisting condition, it is necessary for Dr. Mitchell to address the preexisting history and any influences on a new injury.

Appellant also submitted notes from Dr. Burke. In his November 10, 2011 note, Dr. Burke reported that appellant had a recent flare up of his chronic low back pain. On February 24, 2012 he stated that appellant sought treatment on October 29, 2011 due to low back pain that began while he was at work. Dr. Burke diagnosed with acute low back strain. While these notes include a mention of appellant’s employment incident on October 29, 2011 Dr. Burke did not provide a clear statement that he believed that the October 29, 2011 lifting incident resulted in appellant’s low back condition. Dr. Burke noted that appellant had chronic low back pain and suggested that his condition was a flare up of this preexisting condition rather than a new injury. Without a clear opinion on the causal relationship between appellant back condition and his employment incident, these notes are not sufficient to meet appellant’s burden of proof.

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ 20 C.F.R. § 10.5(ee).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *J.Z.*, 58 ECAB 529 (2007).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish that he sustained a traumatic back injury in the performance of duty on October 29, 2011.

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2012 decision of Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2012
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board